

**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



**Additional Prehearing Questions for
John Dever upon his nomination to be
General Counsel of the Office of the Director of National Intelligence**

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1: Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies to the Director of National Intelligence (DNI) and to the heads of all departments, agencies, and other entities of the U.S. Government involved in intelligence activities. What is your understanding of the standard for meaningful compliance with this obligation by the Office of the Director of National Intelligence (ODNI) and the heads of all departments, agencies and other entities of the U.S. Government involved in intelligence activities to keep the congressional intelligence committees, including all their Members, fully and currently informed of intelligence activities? Under what circumstances do you believe it is appropriate to brief the Chairman and Vice Chairman and not the full committee membership?

Section 502 of the National Security Act charges the DNI with a responsibility to keep the congressional intelligence committees fully and currently informed of all intelligence activities other than covert actions, to furnish the congressional intelligence committees with any information or material concerning intelligence activities other than covert actions requested by the committees to carry out their responsibilities, and to report significant anticipated intelligence activities or significant intelligence failures other than covert action.

Notification should be limited to the Chairman and Vice Chairman or Ranking Member of the congressional intelligence committees in circumstances where the President determines that it is essential to limit access to a covert action finding to meet extraordinary circumstances affecting vital interests of the United States, as authorized by Section 503 of the National Security Act.

Priorities of the Director of National Intelligence

QUESTION 2: Have you discussed with the DNI her specific expectations of you, if confirmed as General Counsel, and her expectations of the Office of the General Counsel as a whole? If so, please describe those expectations.

The DNI has expressed to me her expectations, should I be confirmed, that I lead the OGC in providing accurate and timely legal advice in support of her responsibilities to ensure that the IC's activities comply with the Constitution and laws of the United States.

The Office of the General Counsel

QUESTION 3: The Office of the General Counsel of the ODNI has many roles and responsibilities. What are your expectations for the Office?

- a. Do you have any preliminary observations on its responsibilities, performance, and effectiveness?

The responsibilities of the Office of General Counsel flow from language in the National Security Act whereby, “the General Counsel is the Chief legal officer of the Office of the Director of National Intelligence” and “shall perform such functions as the Director of National Intelligence may prescribe.” As such, if confirmed, the Office of General Counsel attorneys and support staff will assist me in providing accurate and timely legal advice to ODNI. In addition, ODNI OGC will work closely with OGCs from other IC elements, as appropriate, to ensure compliance with the Constitution and laws of the United States.

I have had an opportunity to work with ODNI OGC for several weeks as a Special Advisor and have been very impressed with both the performance and effectiveness of the office.

- b. If confirmed, will you seek to make changes in the numbers or qualifications of attorneys in the office, or the operations of the office?

If confirmed, one of my first priorities will be to assess the whether we have adequate staffing and qualifications to address the responsibilities of the office. In addition, I will assess how the office operates and, in consultation with current leadership, make prudent adjustments as necessary.

QUESTION 4: Please describe who or what you understand to be your client or clients in the position of General Counsel of the Office of the Director of National Intelligence (ODNI/GC). As part of your answer, please address how that will guide your relationship with and obligations to the ODNI, the DNI, the Intelligence Community (IC) as a whole, and the President.

Pursuant to section 103C of the National Security Act, the ODNI/GC is the chief legal officer of the Office of the Director of National Intelligence and its

components, including the National Counterterrorism Center, National Counterintelligence and Security Center, and other ODNI Directorates, Components and Offices. The ODNI/GC does not serve as the General Counsel of any other department, agency, or element of the United States Government. The General Counsel's principal clients are thus the DNI and other senior ODNI officials and employees. Of course, while providing advice directly to the DNI, the ODNI/GC works in conjunction with other attorneys across the Intelligence Community (IC) as well as the broader government, as appropriate, to support the DNI's responsibility to ensure compliance with the Constitution and laws of the United States by members of the IC. I expect to engage cooperatively with my counterparts in the IC, other departments and agencies, and the Executive Office of the President.

QUESTION 5: Describe your understanding of the responsibilities of the DNI and the GC/ODNI in reviewing, and providing legal advice on, the work of the Central Intelligence Agency (CIA), including covert action undertaken by the CIA.

Pursuant to the National Security Act, the DNI is the head of the IC. In this role the DNI is charged with many responsibilities, including ensuring "compliance with the Constitution and laws of the United States by the Central Intelligence Agency."

Therefore, as appropriate, the GC/ODNI is responsible for assisting in ensuring this compliance, and works very closely with the GC of the CIA to achieve this on all matters, including covert action.

QUESTION 6: What are your plans to recruit and retain top talent in the Office of General Counsel of ODNI? Do you plan to offer additional detailee options at all career levels so that attorneys from other agencies can bring their expertise to ODNI and, in turn, bring ODNI experience back to their home agency?

Top legal talent is essential for the OGC/ODNI to successfully complete its mission. To that end, should I be confirmed, a priority will be to assess our current approaches to recruitment and retention. A critical component to our personnel strategy will be to encourage a robust detailee program at all levels to bring critical knowledge to ODNI and vice versa.

QUESTION 7: Explain your understanding of the role of the ODNI/GC in resolving conflicting legal interpretations within the IC.

By statute, the DNI is both the head of the IC and is responsible for ensuring IC compliance with the Constitution and laws of the United States. The DNI executes this second roles in conjunction with the host executive departments of those elements. ODNI's Office of General Counsel is well positioned to identify cross-cutting legal issues or conflicting legal interpretations within the IC, and, where appropriate, to coordinate efforts to resolve those issues. If confirmed, I expect to work with lawyers from the Office of General Counsel and counterparts across other IC elements and the Executive Branch to undertake these efforts at resolving interpretive conflicts. If these conflicts cannot be resolved then we would coordinate with the Office of Legal Counsel at the Department of Justice as appropriate.

Intelligence Collection

QUESTION 8: As defined in Title 50, “the term ‘intelligence’ includes ‘foreign intelligence’ and ‘counterintelligence.’” Title 50 defines “national intelligence” as referring “to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States that – (A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and (B) that involves (i) threats to the United States, its people, property, or interests; (ii) the development, proliferation, or use of weapons of mass destruction; or (iii) any other matter bearing on United States national or homeland security.”

- a. Do you interpret the term “intelligence” to include anything beyond “foreign intelligence” or “counterintelligence?” If so, what other kinds of intelligence do you believe falls under the term “intelligence?”

Yes. The definition of “intelligence” contained in the National Security Act, as noted, provides that “[t]he term ‘intelligence’ *includes* foreign intelligence and counterintelligence” (emphasis added). I therefore understand foreign intelligence and counterintelligence to be illustrative and not exclusive. I understand such intelligence could include a wide range of information that may be relevant to the statutorily authorized missions of IC elements but that does not qualify as foreign intelligence or counterintelligence.

The specific application and interpretation of these terms must be evaluated on a case-by-case basis, taking into account the specific authorities associated with the underlying activity. If confirmed, I

would work closely with counterparts at other IC elements, the Department of Justice, and other relevant agencies to ensure careful legal analysis of those terms and ensure compliance with statutory requirements and policy.

- b. What are the differences between “intelligence” and “national intelligence?” Please provide examples of something you would consider to be “intelligence” that is not “national intelligence,” and something that is “national intelligence” but not “intelligence.” Your examples can be included in a classified annex.

Under section 3(5) of the National Security Act, the term “national intelligence” (and “intelligence related to national security”) refers to “all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that—(A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and (B) that involves—(i) threats to the United States, its people, property, or interests; (ii) the development, proliferation, or use of weapons of mass destruction; or (iii) any other matter bearing on United States national or homeland security.” It is my understanding that “national intelligence,” as a subset of “intelligence,” must pertain to more than one agency and must also meet one of the criteria identified in subsection (B).

The specific application and interpretation of these terms must be evaluated on a case-by-case basis, taking into account the specific authorities associated with the underlying activity. If confirmed, I would work closely with counterparts at other IC elements, the Department of Justice, and other relevant agencies to ensure careful legal analysis of those terms and ensure compliance with statutory requirements and policy.

Foreign Intelligence Surveillance Act

QUESTION 9: Congress recently passed the Reforming Intelligence and Securing America Act (RISAA), which extended Title VII of the Foreign Intelligence Surveillance Act (FISA) until April 2026 and enacted other reforms.

- a. Do you support reauthorization for a period of years or making these provisions permanent? Please provide the principal reasons for your support.

Section 702 provides us with absolutely critical foreign intelligence. Losing this authority would have a significant impact on our ability to collect on non-US persons. If confirmed, I would not enter this position with an inelastic predisposition as to whether reauthorization should be for a period of years or permanent. I would assess all data available to me, weigh benefit versus risk, taking into account relevant controls and past compliance performance in order to render my best advice to the DNI.

- b. What RISAA reforms do you view as most critical to our national security? What additional reforms, if any, do you believe are necessary to either RISAA or to FISA as a whole?

The reforms in RISAA as a whole are critical to our national security because they preserve the operational efficacy of a vital foreign intelligence authority – Section 702 of FISA – while also improving compliance and protecting privacy and civil liberties of all Americans. Amendments to Section 702 or other provisions of FISA should focus on enhancing transparency, oversight, and accountability while maintaining the IC's ability to protect national security effectively. If confirmed, I look forward to working with the DNI and this Committee to support implementation and reforms that balance operational effectiveness with accountability, civil liberties protection, and public trust.

QUESTION 10: What responsibilities does the ODNI/GC have with regard to FISA, and specifically regarding the implementation of RISAA?

Under Section 702 of FISA, the Attorney General and the DNI make annual certifications that authorize IC elements to target non-U.S. persons reasonably believed to be located outside the United States to acquire specific categories of foreign intelligence information. As part of those annual certifications, by statute, the Attorney General and the DNI must make certain representations regarding the legal sufficiency of the

procedures and guidelines required under the statute, including that the procedures and guidelines are consistent with the requirements of the Fourth Amendment to the Constitution of the United States. In making these representations, it is my understanding that the Attorney General and the DNI rely on the information they have learned over the course of the year in their roles as overseers of the program. This information includes the regular and extensive oversight performed by the Department of Justice and ODNI, including attorneys within ODNI's Office of General Counsel, of targeting decisions, querying activities, and minimization practices of the IC elements that participate in the program. Since the passage of RISAA, it is my understanding that ODNI has worked with the Department of Justice to ensure the timely and effective implementation of RISAA's reforms. If confirmed, I will ensure that ODNI's Office of General Counsel remains closely involved in these oversight activities.

QUESTION 11: During RISAA's floor action, there was much debate about whether to require a warrant for a query of U.S. person information within lawfully collected Section 702 data. What is your position on whether to include a warrant requirement for U.S. person queries of Section 702 data?

I currently do not believe there is a warrant requirement for a query of U.S. person information within lawfully collected Section 702 data. However, until very recently there had not been any court cases implicating the Fourth Amendment in this area. If confirmed, a priority of mine will be to become fully cognizant of exactly how this program works, assess the current state of the law, and assess the efficacy of the controls in place to protect civil liberties, in order to provide the DNI with my best advice on this issue.

QUESTION 12: In addition to the Foreign Intelligence Surveillance Court, the legislative and executive branches have oversight of FISA's Title VII authorities. Please describe your understanding of ODNI's and the IC's oversight to ensure FISA's authorities – and specifically, Section 702 – are constitutional and ensure U.S. persons' legal rights are protected. Are there adequate oversight protocols in place? If not, what additional protocols would you recommend, if confirmed?

As I referenced in my previous responses, it is my understanding that the Department of Justice and ODNI conduct regular and extensive independent oversight of IC

elements' implementation of Section 702 authorities to ensure compliance with the FISA statute, the Fourth Amendment, and other applicable procedures and guidelines. Each agency's Section 702 targeting (when applicable), minimization, and querying procedures are approved by the Attorney General and reviewed by the Foreign Intelligence Surveillance Court (FISC). These procedures provide robust privacy and civil liberties protections for United States persons. The Department of Justice and ODNI conduct regular reviews of agencies' compliance with these procedures, which include the reforms mandated by RISAA. These reviews include, for example, independent examination of targeting decisions, disseminations of U.S. person information, and U.S. person queries. The Department of Justice reports all compliance incidents to the FISC and, in coordination with ODNI, works with agencies to thoroughly investigate and remediate compliance incidents. ODNI provides critical support to the Department of Justice's oversight efforts, and also focuses on larger trends and facilitating multiagency conversations concerning remediation efforts. Compliance officers, lawyers, civil liberties and privacy officers, and inspectors general at each IC element provide additional oversight.

If confirmed, I will work with the Department of Justice to consider whether any additional oversight protocols are warranted and appropriate.

Classification and Declassification

QUESTION 13: The government systematically overclassifies too much information. At the same time, the government often fails to protect the nation's most important secrets. Executive Order 13526 (December 29, 2009), which prescribes the system for classifying, safeguarding, and declassifying national security information, has not been updated in 15 years. What changes, if any, do you think are necessary to improve the classification system?

Like the DNI, I believe that over classification undermines transparency, burdens taxpayers, and complicates information sharing within the government and with important national security partners. If confirmed, I look forward to learning more about the classification process, and with that understanding, provide legal counsel that helps modernize classification policies, practices, and technologies.

Evaluation of Office of the Director of National Intelligence

QUESTION 14: Members of the Committee have expressed concern that the ODNI does not have all of the legal authorities necessary to fulfill congressional expectations for the office. Do you have any preliminary observations on strengths

or weaknesses of the authorities of the Office with respect to a successful mission of the ODNI? If so, please describe.

Given my brief tenure at ODNI, I have not yet formed an opinion as to whether the ODNI has the legal authorities to fulfill congressional expectations. If I am fortunate enough to be confirmed, I will assess this and raise any issues as appropriate.

QUESTION 15: Members also have expressed concerns that the ODNI's bureaucracy has resulted in inefficiencies. Do you have any preliminary observations on strengths or weaknesses of the authorities of the Office with respect to the ability of the General Counsel's office to function within the ODNI bureaucracy? If so, please describe.

Given my brief tenure at ODNI, I have not yet formed an opinion as to the GC /ODNI's ability to function with the ODNI bureaucracy. If I am fortunate enough to be confirmed, I will assess this and raise any issues as appropriate.

Intelligence Community Whistleblowers

QUESTION 16: Do you believe that IC whistleblowers currently have all the protections they need to interact directly with the congressional intelligence committees?

- a. If not, what legal authorities are required to ensure these protections?
- b. If so, what legal authorities provide the basis for those protections?

Whistleblowers serve a vital role within the IC by promoting government accountability, maintaining the integrity of the workforce, and addressing allegations of wrongdoing without improperly disclosing classified information. If confirmed, I will have an opportunity to study the implementation of the Intelligence Community Whistleblower Protection Act and other issuances to determine whether existing authorities provide sufficient protections to whistleblowers.

QUESTION 17: What is your view of the ODNI/GC's role relative to advancing an IC "whistleblower" complaint to Congress, pursuant to the Intelligence Community Whistleblower Protection Act?

As the ODNI's chief legal officer, the ODNI/GC counsels and supports the DNI as

she exercises her responsibilities under the Intelligence Community Whistleblower Protection Act. That Act provides whistleblowers the means to report to Congress complaints or information relating to “urgent concerns” after an initial report to the IC IG. If confirmed, I will support the DNI’s pledge to commit ODNI to the highest standards of moral, ethical, and legal conduct in all aspects and will ensure whistleblowers are afforded all legal protections to which they are entitled, including access to Congress.

QUESTION 18: How would you address a situation in which you disagree with the IC Inspector General’s determination that a whistleblower complaint qualifies as an “urgent concern,” for the purposes of advancing a complaint to Congress?

Pursuant to Section 103H(k)(5)(G)(ii) of the National Security Act the IC IG has “sole authority to determine whether any complaint or information reported to the Inspector General is a matter of urgent concern.” Therefore, the ODNI/GC has no role in determining whether the matter is advanced to Congress. If confirmed, I commit to ensuring that every complaint is handled in compliance with all legal requirements.

Executive Branch Oversight of Intelligence Activities

QUESTION 19: Are there improvements, in terms of resources, methodology, and objectives that you believe should be considered for Executive Branch oversight of the intelligence activities of the United States Government?

All three branches of government play an important role in conducting this oversight, with many entities within the Executive Branch doing their part. This includes the general counsel’s offices, civil liberties and privacy officials, and inspectors general of IC elements, and other entities like the Privacy and Civil Liberties Oversight Board (PCLOB). The Department of Justice also plays a key role, including by conducting oversight of activities under FISA.

If confirmed, I anticipate that oversight would be a particularly important part of my role. The DNI has a specific obligation in the National Security Act to ensure compliance with the Constitution and laws of the United States by elements of the IC, and it is my understanding that the ODNI General Counsel plays a significant role in helping the Director to carry out this obligation.

If confirmed, I thus believe I will have an opportunity to better assess whether improvements to the existing oversight structure are warranted, and I pledge to

work closely with the Committee should I identify a need for additional authorities, organizational changes, or other reforms.

Relationship with Other Officials

QUESTION 20: What should be the relationship of the ODNI/GC with respect to the following officers of the IC:

- a.** General Counsel, CIA;

The National Security Act specifically charges the DNI with many responsibilities relating to the CIA, including ensuring CIA compliance with the Constitution and laws of the United States. The statute thus clearly contemplates a very close working relationship between the two agencies and, by extension, their General Counsels. I thus expect to have a close and collaborative relationship with the CIA General Counsel.

- b.** Assistant Attorney General for National Security, Department of Justice;

Although the National Security Division of the Department of Justice is not part of the IC, there are a number of areas where the DNI and Attorney General share responsibilities. For example, activities under Section 702 of FISA must be jointly authorized and overseen by the Attorney General and the Director and many of the procedures required by Executive Order 12333 must be approved by the Attorney General in consultation with the DNI. Given this, it is my understanding that the ODNI General Counsel and the Assistant Attorney General for National Security, and their respective offices, have traditionally maintained a close working relationship. If confirmed, I expect to maintain this strong relationship

- c.** Inspector General, ODNI; and

The IC IG oversees the activities of the ODNI and other IC elements, and by statute reports directly to the DNI. As a result, I believe the ODNI General Counsel must have a strong working relationship with the IC IG. I have already developed a close collaboration with the IC IG nominee and will seek to maintain that collaboration if confirmed.

d. Civil Liberties and Privacy Officer, ODNI.

The ODNI's Civil Liberties Protection Officer heads the ODNI Office of Civil Liberties, Privacy, and Transparency, reports directly to the DNI, serves as the Chief Transparency Officer for the ODNI, and is among the core group of ODNI officials—alongside the General Counsel and the IC IG—responsible for overseeing the activities of the ODNI and other IC elements. This range of duties clearly implicates a number of issues with legal equities. Therefore, I expect to work closely with ODNI's Civil Liberties Protection Officer in ensuring that ODNI always upholds the civil liberties and privacy rights of the American people.

QUESTION 21: What is your understanding of the relationship between the ODNI/GC and the White House Counsel's Office (WHCO)? When do you believe it is appropriate to include WHCO in your legal deliberations?

The DNI is the President's principal advisor for intelligence matters related to the national security. In support of that role, the ODNI/GC plays a pivotal role in, among other things, making sure that IC equities are represented during the interagency legal process and coordinating and presenting the consensus views of the IC legal community to the broader Federal Government. Therefore, if confirmed, would endeavor to maintain close collaboration between the offices.

QUESTION 22: What do you believe the relationship is between the Office of General Counsel of ODNI and the Office of Legal Counsel (OLC) at the Department of Justice? Do you consider OLC opinions to be binding on the ODNI/GC? Please describe the circumstances under which you believe soliciting an opinion from OLC is appropriate.

By delegation from the Attorney General, OLC provides legal advice to the President and all Executive Branch agencies, and its opinions are generally understood to be binding on Executive Branch agencies. I thus believe it is essential for the ODNI General Counsel and OLC to have a strong working relationship and that collaboration between the offices is critical to supporting the DNI fulfill her statutory responsibility to ensure the IC complied with the Constitution and laws of the United States. Generally, I would consult OLC on complex legal issues where two or more agencies or IC elements cannot come to a common understanding on their legal obligations.

QUESTION 23: What, if any, conflicts might arise from your private practice if you are confirmed as General Counsel, and how would you address these conflicts?

I do not anticipate any conflicts arising from my previous role as I was providing enterprise risk management and cybersecurity advice. I did not establish attorney / client relationships during that time. If, however, there is ever a potential conflict of interest I will immediately seek the advice of an ethics officer and comply with all required and recommended actions.

QUESTION 24: Please provide copies of the publications listed in your responses to the Committee's Questionnaire for Completion by Presidential Nominees.

I will provide these copies expeditiously.

Questions from Senator Wyden

FISA

QUESTION 25: During her confirmation process, Director Gabbard wrote: "Warrants should generally be required before an agency undertakes a U.S. Person query of FISA Section 702 data, except in exigent circumstances, such as imminent threats to life or national security." Do you agree?

I currently do not believe there is a warrant requirement for a query of U.S. person information within lawfully collected Section 702 data. However, I also understand the criticality of protecting civil liberties, as well as the fact that there have been recent developments in this area, to include a case which may implicate Fourth Amendment concerns. Until that recent case, there had not been any court cases implicating the Fourth Amendment in this area.

If confirmed, a priority of mine will be to become fully cognizant of exactly how this program works, assess the current state of the law, and assess the efficacy of the controls in place to protect civil liberties, in order to provide the DNI with my best advice on this issue.

QUESTION 26: During his confirmation process, Assistant Attorney General for National Security John Demers was asked about the prohibition on reverse targeting in Section 702 of FISA. He responded: "As I understand it, determining whether a particular known U.S. person has been reverse-targeted through the targeting of a Section 702 target necessitates a fact specific inquiry that would involve consideration

of a variety of factors. For example, as the Privacy and Civil Liberties Oversight Board noted in its 2014 report, if a Section 702 tasking resulted in substantial reporting by the Intelligence Community regarding a U.S. person, but little reporting about a Section 702 target, that might be an indication that reverse targeting may have occurred.” How would you ensure that this fact specific analysis is applied to the nomination of Section 702 targets?

I am not familiar with how this approach is specifically applied to the nomination process of IC elements, but if confirmed I will familiarize myself with this process.

My general understanding is that regular oversight conducted by DOJ and ODNI of activities conducted under Section 702 of FISA includes fact-specific examinations of whether reverse-targeting may have occurred, and that if and when any reverse targeting is identified, it is reported to the FISC and Congress consistent with applicable law. If confirmed, I will ensure that ODNI’s Office of General Counsel remains closely involved in these oversight activities, to include reporting potential violations. If I encounter such issues, I will work the appropriate departments to identify root causes and implement effective solutions.

QUESTION 27: During her confirmation process, Director Gabbard wrote that she would oppose any effort to re-codify Section 215 of the USA PATRIOT Act. Do you agree?

I have not had the occasion to consider Section 215 in depth during my time in government and private practice, and therefore, if confirmed, would welcome conversations with colleagues across the government about its mission implications. However, I share the DNI’s concerns about Section 215 authorities and their implications on the privacy and civil liberties of Americans.

QUESTION 28: Do you agree with Director Gabbard that Section 215 “raised significant concerns”?

Yes.

QUESTION 29: If you do not oppose the re-codification of Section 215 of the USA PATRIOT Act or similar business records authorities, please respond to the following questions:

- a. Do you believe the government’s authority to collect business records should be limited to “tangible things” that pertain to: (1) a foreign power

or an agent of a foreign power; (2) the activities of a suspected agent of a foreign power who is the subject of an authorized investigation; or (3) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of an authorized investigation?

- b. Under what circumstances, if any, do you believe an application for business records should be based on the “relevance” standard without satisfying any of the above three requirements for presumptive relevance?

I neither oppose nor support the re-codification of Section 215, but share the DNI’s concerns about its implications on the privacy and civil liberties of Americans. If confirmed, I will consider the above questions in depth.

QUESTION 30: In a November 6, 2020, letter, then-DNI John Ratcliffe wrote that, “with respect to the use of Title V [of FISA] to obtain records from ISPs, the FBI does not request and obtain pursuant to Title V the content of any communication, to include search terms submitted to an online search engine.” Do you agree that internet search information constitutes content of communications and thus can only be obtained with a probable cause warrant?

Title V of the FISA authorized the government to seek a court order to acquire “tangible things” for foreign intelligence purposes. However, that provision expired in March 2020. If confirmed, I may have an opportunity to better understand how these authorities were used and, if there is an effort to reauthorize this provision, ensure that the reauthorized authority conforms with the Constitution.

QUESTION 31: In November 2019, the government acknowledged that it was not collecting cell-site or GPS information pursuant to Section 215 of the USA PATRIOT Act, which does not require a warrant. In 2020, both houses of Congress passed legislation reauthorizing Section 215 that prohibited such collection, although the legislation was not passed into law. Do you agree that any recodification of warrantless business records collection should not authorize the collection of cell-site or GPS information?

The collection of U.S. person cell-site or GPS information raises important legal and policy questions. If confirmed, I will have an opportunity to better understand how Title V authorities are exercised in practice, and I pledge to work with my counterparts across the Executive Branch, including at the other IC elements and at the Department of Justice, to ensure that all IC activities involving U.S. Persons are carried out in accordance with the Constitution and federal law.

QUESTION 32: The 2018 legislation reauthorizing Section 702 of FISA codified limitations on the use of U.S. person information in criminal proceedings. Do you believe these limitations should be extended to other provisions of FISA?

If confirmed I commit to assessing whether the extension of these limitations is appropriate, and, if so, will take appropriate steps.

QUESTION 33: Under Section 702 of FISA, the government can direct an electronic communications service provider to provide “assistance necessary to accomplish the acquisition.” Under Section 702(h)(5), if the provider does not comply with a directive, the government may seek an order from the FISA Court to compel compliance.

- a. Do you believe that the government should inform the FISA Court should it issue a directive to a provider to alter the encryption afforded by a service or a product, regardless of whether the government files a motion to compel compliance?

As stated by the DNI, encryption is a critical component of protecting civil liberties and should be treated with appropriate caution. Should I be confirmed, I will make it a priority to assess this issue and make any recommendations and notifications as appropriate.

- b. Will you commit to notifying Congress of any such directive?

If confirmed, and upon detailed review of this issue, I commit to notifying Congress as appropriate.

QUESTION 34: Section 704 of FISA requires a warrant for the targeting of a U.S. person overseas “under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required **if** the acquisition were conducted inside the United States for law enforcement purposes.” During his confirmation process to be ODNI General Counsel, then-Principal Deputy Assistant Attorney General Brad Wiegmann wrote that he was “not aware of any operational contexts in which the government has concluded that a warrant would be required if an acquisition were conducted inside the United States for law enforcement purposes but nonetheless that the targeted U.S. person abroad would not have a reasonable expectation of privacy, such that 704 does not apply.” Do you agree?

If confirmed, I look forward to delving into this specific question of interpretation and operations, but as a matter of initial impression, I agree.

QUESTION 35: Do Sections 703, 704 or 705 of FISA limit the targeted collection of geo-location information, communications metadata, or business records of a U.S. person who is overseas?

Section 704 of FISA prohibits the IC from “intentionally target[ing], for the purpose of obtaining foreign intelligence information, a U.S. person reasonably believed to be located outside the United States under circumstances in which the targeted U.S. person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes,” without first obtaining an order from the FISC. This prohibition could apply to an IC element targeting a U.S. person to obtain any type of information, provided that the person has a reasonable expectation of privacy in the information under the circumstances and a warrant would be required if there were a law enforcement investigation seeking to obtain that same information in similar circumstances in the United States. Whether the government would be required to use a warrant to obtain a particular type of data in the United States depends on all the facts. For example, under the Electronic Communications Privacy Act, the government can obtain basic subscriber and session information from a service provider in a criminal investigation using a subpoena; because no warrant is required, the prohibition in section 704 would not apply if, theoretically, there were any foreign intelligence collection from providers targeting U.S. persons outside the United States seeking only such data. In contrast, the government’s practice under the Fourth Amendment in law enforcement investigations in the United States has been to use a warrant to obtain GPS information from a wireless carrier on a prospective basis that allows ongoing geolocation of a person. Therefore, similar efforts targeting U.S. persons abroad for foreign intelligence purposes would trigger section 704. Exceptions to the warrant requirement, such as consent, could be available depending on the facts and therefore could affect whether section 704 would be triggered. Similar analysis would apply to sections 703 and 705.

Even if FISA does not apply, Attorney General-approved guidelines issued under E.O. 12333 may apply. For example, Attorney General-approved guidelines governing NSA’s signals intelligence activities expressly provide that the U.S. SIGINT System (USSS) may intentionally target a U.S. person, whether inside or outside the United States, only if the collection is not governed by FISA and one of the following circumstances exist: the U.S. person or his or her legally-authorized representative has provided consent; the Attorney General has found probable

cause to believe the person is an agent of a foreign power or an officer or employee of a foreign power and the purpose of the collection is to collect significant foreign intelligence or counterintelligence; or exigent circumstances exist and appropriate approvals for such collection have been obtained. Those guidelines also state that “the USSS will not intentionally collect foreign communications for the purpose of targeting a specific U.S. person or person in the United States unless such U.S. person or person in the United States has been separately authorized for targeting under this Annex or FISA.”

QUESTION 36: 50 U.S.C. § 1812, establishes the exclusive means by which electronic surveillance and interception of certain communications may be conducted. Is this provision absolutely binding on all U.S. departments and agencies and on the President?

During my time in government and private practice, I have not had the occasion to consider this question in depth. However, as set forth in Section 112 of FISA, with limited exceptions, FISA constitutes the exclusive statutory means by which electronic surveillance, as defined in FISA, and the interception of domestic wire, oral, or electronic communications for foreign intelligence purposes may be conducted. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that IC activities are carried out in accordance with the Constitution and applicable federal law.

The question on authority over “all” departments and agencies, as well as the President, is broad in nature and may engender the Department of Justice and the White House.

QUESTION 37: Is the exclusive means provision in 50 U.S.C. § 1812 binding, regardless of whether Section 702 of FISA is reauthorized?

During my time in government and private practice, I have not had the occasion to consider this question in depth. However, as set forth in Section 112 of FISA, with limited exceptions, FISA constitutes the exclusive statutory means by which electronic surveillance, as defined in FISA, and the interception of domestic wire, oral, or electronic communications for foreign intelligence purposes may be conducted.

If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that IC activities are carried out in accordance with the Constitution and applicable federal law.

Other Surveillance

QUESTION 38: During her confirmation process, Director Gabbard wrote that Section 213 of the USA PATRIOT Act, which permits delayed notice of search warrants, “raised significant constitutional concerns.” Do you agree?

Yes.

QUESTION 39: Do you believe the Intelligence Community can or should collect U.S. location information pursuant to EO 12333 authorities? If no, how should the IC ensure that it is not collecting the information through incidental collection? If yes, should there be any limitations on the Intelligence Community’s use, retention, or dissemination of the information?

The IC must comply with all applicable U.S. law and policies regarding the collection, retention, dissemination, and use of information about U.S. persons. If confirmed, I look forward to learning more about the current laws and policies regarding location information and what limitations are necessary to protect the privacy of U.S. person while enabling the national security mission.

QUESTION 40: Do you agree that the Intelligence Community cannot request that a foreign entity conduct any activity that it is not authorized to undertake itself? If yes, do you agree that this prohibition also applies to requests from Executive Branch officials outside the Intelligence Community?

As provided in EO 12333, IC elements may not request any person, to include foreign entities and Executive Branch officials outside the Intelligence Community, to undertake activities that the IC elements themselves are prohibited from undertaking.

QUESTION 41: What limitations do you believe should apply to the receipt, use or dissemination of communications of U.S. persons collected by a foreign partner or source? How should those limitations address instances in which the foreign partner or source specifically targeted U.S. persons or instances in which the foreign partner or source has collected bulk communications known to include those of U.S. persons?

IC elements may not request that any person, including a foreign partner, undertake activities forbidden by the Constitution, federal law, or Executive Order, including Executive Order 12333, forbid the IC elements themselves to take. If foreign partners or sources collect and share information concerning U.S. persons, IC elements are only authorized to collect, retain, or disseminate such information in

accordance with the procedures Executive Order 12333 approved by the Attorney General.

QUESTION 42: Former NSA Director Paul Nakasone has stated that, absent consent of the U.S. person or certain emergency situations, U.S. person queries of communications collected under Executive Order 12333 “normally must be approved by the Attorney General on a case-by-case basis after a finding of probable cause.”

- a. Is there any reason this requirement should not apply to other IC entities, particularly with regard to U.S. person queries of data collected in bulk?
- b. How, if at all, should evidence of probable cause presented to the Attorney General by NSA differ than that required under FISA?

Under Executive Order 12333, IC elements must operate in accordance with Attorney General-approved procedures that set forth the circumstances and limits under which elements may lawfully collect, retain, and disseminate information concerning U.S. persons. It is my understanding that, among other things, these guidelines were drafted in order to ensure that lawful intelligence activities are carried out in a manner that provides protection for the privacy and civil liberties of Americans while also accounting for the individual mission sets and authorities of each of the 18 IC elements. If confirmed, I would work with Department of Justice and other IC elements’ General Counsels, to ensure that IC elements comply with these Attorney General approved procedures. In doing so, I will have the opportunity to consider how NSA’s SIGINT-focused procedures work in practice, whether any additional requirements or other changes would be appropriate, and whether similar requirements should be placed on other intelligence disciplines.

QUESTION 43: Please describe the constitutional and statutory restrictions on targeting U.S. persons who are inside the United States when the collection occurs outside the United States. How does the finding in *United States v. Katz* that “the Fourth Amendment protects people, not places” protect U.S. persons, regardless of where the collection occurs?

The IC must collect, retain, disseminate, and use U.S. Person information in accordance with the Constitution and applicable federal law, including FISA and Executive Order 12333. Generally, and in line with the Court’s holding in *Katz*, these issuances do not distinguish between U.S. Persons based on whether those persons are

located inside or outside the United States.

QUESTION 44: Do you believe that communications and communications data collected in transit are or should be treated differently than communications and communications data at rest? Please address any distinctions as they may apply to FISA, EO 12333, PPD-28 and the October 7, 2022, Executive Order on Enhancing Safeguards for United States Signals Intelligence Activities, and USSID 18.

All IC activities involving communications data must be carried out in accordance with the Constitution and applicable federal law, including FISA, as well as Presidential directives, such as Executive Orders 12333 and 14086 and their applicable implementing procedures.

QUESTION 45: In December 2020, the Department of Justice Office of the Inspector General released its Audit of the Federal Bureau of Investigation's Strategy and Efforts to Disrupt Illegal Dark Web Activities. The audit described Network Investigative Techniques (NITs) which "require computer exploits that the FBI is increasingly developing for national security purposes but not for criminal investigations." If confirmed, will you agree to make public annual statistics on the number of times these computer exploits have been used in national security cases and how often they have been used against Americans?

If confirmed, I commit to pursuing appropriate vehicles for increased transparency about the use of these computer exploits in national security cases with ODNI and FBI leadership, including the DNI, ODNI Civil Liberties and Protection Officer, and our FBI counterparts.

QUESTION 46: In June 2018, in the case of *Carpenter v. U.S.*, the U.S. Supreme Court found that the government's collection of cell-site locational records was a Fourth Amendment search. Do you support transparency with regard to whether, and under what circumstances, *Carpenter* applies to the Intelligence Community?

Chief Justice Robert's opinion in *Carpenter* noted that the Court did not consider collection techniques involving foreign affairs or national security. Therefore, it remains unclear whether the IC's potential collection of cell-site locational records, such as purchase through a third-party data broker, constitutes a Fourth Amendment search. However, I support all appropriate transparency efforts that reassure the American public that the IC consistently abides by the Constitution, including the Fourth Amendment, and takes all efforts to protect the privacy and civil liberties of U.S. Persons.

Commercially Available Information

QUESTION 47: Do you support the Intelligence Community's May 2024 Policy Framework for Commercially Available Information, as formalized in the February 6, 2025, Intelligence Community Policy Memorandum 504 (01)? Please elaborate on any aspects you do or do not support.

If confirmed, I look forward to reviewing the implementation of the IC's Policy Framework for Commercially Available Information. However, the framework's goal of enhancing existing privacy and civil liberties regimes in light of the ever-increasing availability of sensitive personal data via commercial sources strikes me as a worthy objective.

QUESTION 48: Do you commit, as Director Gabbard did, to keeping the Committee fully and currently informed of the Intelligence Community's procurement of, access to, and collection of Sensitive Commercially Available Information?

Yes.

QUESTION 49: Section G(2) of the Framework (and section g(3) of the Memorandum) requires the ODNI, in coordination with relevant Intelligence Community elements, to provide a report to the public every two years regarding the Intelligence Community's access to and collection, processing, and safeguarding of Sensitive Commercially Available Information. During her confirmation process, Director Gabbard wrote that she supported this requirement and committed to implementing it. Is that also your position?

Yes.

Cybersecurity

QUESTION 50: During her confirmation process, Director Gabbard wrote that she would use her position as DNI to advocate for policies, practices or legislation to strengthen cyber protections in the telecommunications sector. If confirmed as General Counsel, would you undertake the same advocacy?

Yes.

QUESTION 51: During her confirmation process, Director Gabbard wrote that: "Any cybersecurity legislation should ensure that data sharing between the private

sector and government or other entities is done in a way that respects privacy and avoids unnecessary exposure of personal information.” Do you agree with this view and, if so, how would you go about ensuring those privacy protections?

Yes. If confirmed, I will have the opportunity to consider how current procedures work in practice and whether any additional requirements or other changes would be appropriate.

Transparency

QUESTION 52: Attorney General-approved procedures and guidelines for Executive Order 12333 are current posted online. Do you commit to continuing to post those procedures and to make public any modifications, superseding policies and procedures, or significant interpretations?

Yes.

QUESTION 53: Will you support the declassification and public release of any interpretations of law that provides a basis for intelligence activities, but are inconsistent with the public’s understanding of the law?

Declassification and public release of legal interpretations underpinning intelligence activities should be considered carefully to balance transparency with the need to protect national security. Where feasible and consistent with safeguarding classified information and sensitive intelligence methods or operations, I would support the release of such interpretations to enhance public trust and understanding while ensuring the IC operates within the bounds of law.

QUESTION 54: What would you do if an employee of the Intelligence Community or any other Executive Branch official made a misrepresentation to Congress or to the public related to the legal basis for Intelligence Community activities? If that person refused to correct the public record, would you do so personally?

As ODNI/GC, I intend that any public statements from the ODNI Office of General Counsel be accurate and to counsel ODNI leadership on the importance of maintaining the congressional intelligence committees fully, currently, and accurately informed of all intelligence activities. Should I inadvertently make an inaccurate statement, I commit to publicly correct the statement, consistent with the requirement to protect classified information. If a public statement is not possible due to classified

equities, I will inform the intelligence committees of the inaccuracy in a classified setting.

Chief of Mission Authorities.

QUESTION 55: 22 U.S.C. § 3927 states that: “Under the direction of the President, the chief of mission to a foreign country... shall have full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country...” Absent direct intervention from the President or the National Security Council, is the Intelligence Community obligated to cease intelligence activities (including, but not limited to collection activities, covert action and liaison relationships) that do not have the approval of the chief of mission?

As outlined in 22 U.S.C. § 3927, intelligence activities conducted in a foreign country are subject to the Chief of Mission’s oversight, except where specific exceptions are authorized by the President or National Security Council. If confirmed, I would support the DNI’s efforts to ensure that the IC adheres to these frameworks and, if appropriate, to seek necessary exceptions.

Encryption

QUESTION 56: During her confirmation process, Director Gabbard wrote: “From a civil liberties perspective, there are serious constitutional concerns about the government being granted unrestricted access to America’s private digital property. Mandating mechanisms to bypass encryption or privacy technologies undermines user security, privacy, and trust, and poses significant risks of exploitation by malicious actors.” She reiterated that position during her confirmation hearing, saying, “these back doors lead down a dangerous path that can undermine Americans’ Fourth Amendment rights and civil liberties.” Do you agree?

I agree that government access to digital property raises significant constitutional implications, including the Fourth Amendment. If confirmed, I look forward to supporting the DNI and working with the ODNI Civil Liberties Protection Officer to ensure that the IC’s activities comply with the Constitution and appropriately safeguard privacy and civil liberties.

QUESTION 57: On February 25, 2025, Director Gabbard wrote in a letter to me that she was “aware of press reporting that the UK Home Secretary served Apple with a secret order directing the company to create a ‘back door’ capability in its

iCloud encryption to facilitate UK government access to any Apple iCloud users' uploaded data anywhere in the world.” She further wrote that: “I share your grave concern about the serious implications of the United Kingdom, or any foreign country, requiring Apple or any company to create a ‘backdoor’ that would allow access to Americans’ personal encrypted data. This would be a clear and egregious violation of Americans’ privacy and civil liberties, and open up a serious vulnerability for cyber exploitation by adversarial actors.” Do you agree?

As the DNI stated in her letter, any information sharing between a government—any government—and private companies must be done in a manner that strikes an appropriate balance between national security and the privacy and civil liberties of Americans. If confirmed, I look forward to supporting the DNI with those efforts.

Whistleblowers

QUESTION 58: During her confirmation process, Director Gabbard wrote: “Whistleblowers are essential to ensuring accountability and oversight within the IC, and they must have clear, protected channels to report concerns, including the unauthorized transmittal of classified information to appropriate entities such as Members of Congress, Inspectors General (IGs), and other authorized recipients.” During her confirmation hearing, Director Gabbard was asked if she agreed “that IC whistleblowers must have a clear path to this committee and that they don’t need permission from agencies to talk to [the committee],” to which Director Gabbard responded, “the answer is clearly yes.” Do you agree?

Yes; I understand that Section 103H of the National Security Act provides such a path after notification through the IC IG.

Security Clearances

QUESTION 59: Private attorneys with security clearances represent providers who are issued FISA orders and directives, serve as FISA Court amicus curiae, represent criminal defendants in Classified Information Procedures (CIPA) cases, and represent whistleblowers in matters involving classified information. The Director of National Intelligence serves as the Security Executive Agent responsible for security clearances. If confirmed as General Counsel, would you support policies and practices to ensure that private attorneys are granted and maintain clearances to serve in these capacities?

As an attorney, I appreciate the importance that private counsel plays in ensuring the rule of law and will support policies that, consistent with the President's constitutional authority over access to classified information as head of the Executive Branch and Commander in Chief, ensure that private attorneys can serve in these capacities.

Watchlisting

QUESTION 60: During her confirmation process, Director Gabbard wrote:

“Ensuring fairness and protecting civil liberties in watchlisting programs is critical to maintaining public trust while safeguarding national security. To prevent misuse, I would advocate for clear, evidence-based criteria for watchlisting American citizens, robust oversight mechanisms, and regular audits to ensure no one is listed based on First Amendment-protected activities like free speech or political affiliation. Additionally, I would work to enhance the redress process by improving the Traveler Redress Inquiry Program (TRIP) to ensure timely and transparent resolution of complaints and exploring independent review panels to provide impartial oversight and due process.”

Do you support Director Gabbard's views?

Yes.

Classification and Declassification

QUESTION 61: Executive Order 13526 provides that: “In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; (2) prevent embarrassment to a person, organization or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of national security.” Do you commit to fulfilling both the letter and spirit of these prohibitions, as did Director Gabbard?

Yes.

QUESTION 62: What process do you believe should accompany the declassification of information? For example, do you believe there should be a written record of declassifications? When should the Committee be notified?

If confirmed, I will have the opportunity to consider how current declassification procedures work in practice and consider whether any additional requirements or other changes, to include creation of written records of declassification, would be appropriate.

Espionage Act and Journalists

QUESTION 63: During her confirmation process, Director Gabbard wrote:

“In my book, I expressed concerns about aspects of the Espionage Act that could be interpreted as overly broad or vague, potentially infringing on First Amendment rights and due process protections under the Constitution. These concerns primarily relate to its application in cases involving whistleblowers and journalists, where the Act may criminalize the dissemination of information in ways that could suppress legitimate public discourse or accountability. The Espionage Act also does not allow for due process and the right of an American to defend themselves against such charges in a court of law.”

Do you agree with Director Gabbard’s concerns?

Yes.

QUESTION 64: During her confirmation process, Director Gabbard wrote that she supports the October 2022 Department of Justice policy restricting use of compulsory process to obtain reporter information, calling the policy “essential to protecting press freedoms and maintaining the critical balance between national security and upholding the First Amendment.” Do you agree?

Yes.

Interrogation, Detention and Rendition

QUESTION 65: You served as FBI Assistant General Counsel in Washington, D.C., and Guantanamo Bay, Cuba, between 2004 and 2006. Please describe the issues you worked on, including with regard to DOD and CIA detainees at Guantanamo.

I worked on legal reviews of detainee risk assessments as well as the provision of legal advice during the transfer of detainees from CIA to FBI custody.

QUESTION 66: Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the use of any interrogation technique or approach or any treatment related to interrogation that is not authorized by and listed in the Army Field Manual. Is this provision absolutely binding on the Intelligence Community and the President?

Yes.

QUESTION 67: The statutory prohibition on interrogations not consistent with the Army Field Manual applies to any individual “in the custody or under the effective control of an officer, employee, or other agent of the United States Government; or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict.”

- a. Please describe the factors that would indicate whether a detainee is in the “effective control” of any officer, employee, or other agent of the United States Government.
- b. Please describe how you would define whether a detainee is “detained within a facility owned, operated, or controlled by a department or agency of the United States.”

The terms “effective control” and “owned, operated, or controlled” involve legal and operational considerations that are evaluated on a case-by-case basis, taking into account factors such as the degree of authority or influence exercised by U.S. personnel and the nature of the facility's management. These determinations require careful legal analysis to ensure compliance with statutory requirements and international obligations. If confirmed, I would work closely with other legal experts at relevant agencies to ensure any actions involving detainees align with U.S. laws, policies, and ethical standards.

QUESTION 68: Section 1045 states that: “The head of any department or agency of the United States Government shall provide the International Committee of the Red Cross with notification of, and prompt access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, contractor, subcontractor, or other agent of the United States Government or detained within a facility owned, operated, or effectively controlled by a department, agency, contractor, or subcontractor of the United States

Government, consistent with Department of Defense regulations and policies.” Is this provision of law absolutely binding on the Intelligence Community and the President?

I believe you refer to section 2000dd-2(b)(1) of Title 42. If so, yes that provision is binding on the Intelligence Community and the President.

QUESTION 69: Executive Order 13491 prohibits the CIA from operating any detention facility except to hold people “on a short-term, transitory basis.” Do you support this provision? How would you define “short-term” and “transitory”?

The specific definitions of “short-term” and “transitory” require careful consultation with legal and policy experts to ensure compliance with the Executive Order and alignment with national security objectives as well as the United States’ commitment to lawful and ethical detention practices.

QUESTION 70: Do you agree that Intelligence Community officers should not participate in interrogations of detainees in liaison custody when those officers witness, know of, or otherwise suspect the torture or mistreatment of detainees?

Yes.

QUESTION 71: The United States recognizes its obligations under the Convention Against Torture, not to “expel, return (‘refouler’) or extradite a person to another state where there are substantial grounds for believing that he [or she] would be in danger of being subjected to torture.”

- a. To what extent should written “diplomatic assurances” be required for extraditions and renditions?
- b. Should such assurances be accepted from countries with established records of committing torture?
- c. What responsibility does the Intelligence Community have not to provide support to operations conducted by other elements of the United States Government that violate this obligation?

I understand that the necessity and reliability of written “diplomatic assurances” must be carefully evaluated on a case-by-case basis, particularly when dealing with countries with records of torture. If accepted, such assurances should be subject to rigorous verification and monitoring mechanisms to ensure compliance with U.S. obligations under the Convention Against Torture. The United States Government as a whole, not just the IC, has a shared obligation under the Convention Against Torture. The IC will support our federal counterparts in line with that obligation.

Lethal Operations

QUESTION 72: Please describe your view of the legal and policy implications of targeting or otherwise knowingly killing a U.S. person in a U.S. Government lethal operation. What additional public transparency do you believe would be warranted in that situation?

Even if rare, targeting or knowingly killing a U.S. person in a U.S. Government lethal operation is a grave action that raises serious constitutional, legal, and policy implications. In partnership with my IC colleagues and lawyers from across the U.S. Government, I will support the DNI’s efforts to ensure that such actions adhere to Constitutional due process guarantees. Consistent with the need to protect classified or otherwise sensitive information, I would advocate for maximum public transparency about such operations to both build public trust about such actions and safeguard national security.

Competitive Advantage

QUESTION 73: The October 7, 2022, Executive Order 14086 on Enhancing Safeguards for United States Signals Intelligence Activities states: “It is not a legitimate objective to collect foreign private commercial information or trade secrets to afford a competitive advantage to United States companies and United States business sectors commercially. The collection of such information is authorized only to protect the national security of the United States.”

- a. Do you agree with these limitations and should they apply to non-SIGINT activities?

Yes, I support the general principle of focusing intelligence collection on national security objectives.

- b. Will you commit to informing the public of any modifications to the policy?

I understand that any amendments to the Executive Order would be inherently public. Otherwise, if warranted, modifications to IC element implementing policies should be communicated to Congress and, when consistent with national security interests, the public.

QUESTION 74: How would you guard against the use of the Intelligence Community's collection or analytical capabilities to afford a competitive advantage to particular companies or business sectors?

If confirmed, I would support the DNI's efforts to enforce strict adherence to legal frameworks, such as Executive Order 12333 and Executive Order 14086, which limit collection and dissemination of intelligence to national security objectives. I will also have the opportunity to consider whether current oversight mechanisms, including audits and regular reviews by Inspectors General, work in practice and consider whether any additional requirements are necessary. Finally, I would ensure that the Office of General Counsel plays an active role in supporting and maintaining clear internal policies, rigorous training, and conducting legal reviews that would reinforce the IC's unbiased intelligence mission, preventing any activities that could unfairly benefit specific companies or sectors.

QUESTION 75: How will you ensure that authorized economic intelligence activities (e.g. to identify trade or sanctions violations or government influence or direction) are not undertaken in such a way as to advantage certain companies over others?

The IC operates within a strict legal and ethical framework designed to ensure its intelligence activities are conducted in alignment with national security priorities and free from improper influence. If confirmed, I will review whether that framework is sufficient and work with this Committee and other oversight bodies to maximize its effectiveness.

Congress

QUESTION 76: In December 2024, the Department of Justice Office of the Inspector General released "A Review of the Department of Justice's Issuance of Compulsory Process to Obtain Records of Members of Congress, Congressional

staffers, and Members of the News Media.” During her confirmation process, Director Gabbard wrote the following with regard to the OIG review:

“The collection of communications records of congressional Members and staff, particularly when based solely on their constitutionally authorized oversight duties, is a significant breach of the constitution and separation of powers. Such actions risk chilling legitimate oversight and creating the appearance of executive branch interference in legislative activities. Safeguards must ensure that intelligence and investigative activities respect the independence of co-equal branches of government.

I support the policy changes outlined in the OIG Review that aim to address these concerns and ensure appropriate checks are in place. Further policy adjustments, such as heightened internal review and oversight, may be necessary to strengthen protections for congressional communications.

Any effort to collect such records should undergo the most rigorous scrutiny, including notifying Congress when appropriate, balancing security and transparency concerns, and informing the issuing judge that the targets are congressional Members or staff so constitutional implications can be fully considered. If confirmed, I would work to uphold these principles while safeguarding national security and civil liberties.”

- a.** Do you agree with Director Gabbard’s concerns and would you likewise work to uphold these principles?

Yes.

- b.** Do you support the policy changes described in the OIG Review? Do you believe further policy changes should be made?

Yes. If confirmed, I will study this matter more closely and assess whether additional policy changes are warranted.

- c.** Do you agree that Congress should be notified prior to any collection of communications or communications records of Members or staff? If yes, who in Congress should be notified?

Any effort to collect such records should undergo the most rigorous scrutiny so that such actions do not risk chilling legitimate oversight or creating the appearance of executive branch interference in legislative activities. That scrutiny includes including notifying Congress, when appropriate, and balancing security and transparency concerns.

- d. Do you agree that the government should inform the judge issuing an order for compulsory process or a non-disclosure order that the targets are congressional Members or staff so that the judge can consider the constitutional implications?

Yes, the government should inform the issuing judge for an order for compulsory process when targets are congressional Members or staff so that the Court can fully consider constitutional implications.

Intelligence Community Inspector General

QUESTION 77: 50 USC § 3033(i) establishes that the Inspector General of the Intelligence Community shall appoint a Counsel to the Inspector General who shall report to the Inspector General or obtain the services of a counsel appointed by and directly reporting to another inspector general or the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis. Do you agree that the IC IG shall be counseled and advised independently on OIG-related legal matters by attorneys who are answerable only to the IG?

Yes. Like the DNI, I believe that the IC IG's independence is essential to ensure oversight and accountability in the IC.

QUESTION 78: 50 USC § 3033(j)(3) states that: "Consistent with budgetary and personnel resources allocated by the Director of National Intelligence, the Inspector General has final approval of the selection of internal and external candidates for employment with the Office of the Inspector General; and all other personnel decisions concerning personnel permanently assigned to the Office of the Inspector General, including selection and appointment to the Senior Intelligence Service, but excluding all security-based determinations that are not within the authority of a head of a component of the Office of the Director of National Intelligence." Do you agree that the Inspector General has final approval overall employment decisions related to the OIG, including hiring, assignments, firings, transfers, and involuntary administrative leaves?

Pursuant to Section 103H(j)(3), the IC IG has final approval of the selection of internal and external candidates for employment with IC IG and over all other personnel decisions concerning personnel permanently assigned to the IC IG office. I have not had the occasion to consider Inspector General authorities in depth. If confirmed, however, I would partner with the counsel to IC IG and other IC elements' General Counsels to ensure that IC IG can properly exercise the authorities needed to ensure independent oversight and accountability of the IC.

Reprogramming

QUESTION 79: Section 102A(d) of the National Security Act of 1947 sets forth the role of the Director or National Intelligence in the transfer or reprogramming of funds made available under the National Intelligence Program (NIP). Section 102A(d) also provides that a transfer or reprogramming of NIP funds is permissible “only if . . . the funds are being transferred to an activity that is a higher priority intelligence activity.” Do you agree that funds authorized and appropriated for the NIP may only be transferred or reprogrammed as authorized by Section 102A(d) of the National Security Act?

Section 102A(d) provides the DNI with transfer and reprogramming authorities with respect to funds appropriated for a program within the NIP. To use that authority, the statutory conditions need to be satisfied, including that the funds be transferred to an activity that is a higher priority intelligence activity.